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FEDERAL ELECTION COMMISSION

SENSITIVE

Chris Gober
The Gober Group
P.O. Box 341016
Austin, TX 78734

MAY 29 2019

RE: MUR 7267

Dear Mr. Gober:

On August 8, 2017 and November 22, 2017, the Federal Election Commission (the "Commission") notified your clients, Josh Hawley, Hawley for Missouri and Doug Russell in her official capacity as treasurer, and Josh Hawley for Senate and Salvatore Purpura in his official capacity as treasurer (collectively "Respondents"), of a complaint and supplement alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, (the "Act"). On May 21, 2019, the Commission found, on the basis of the information in the complaint and supplement, and information provided by the responses, that there was no reason to believe that Respondents violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Jonathan Peterson, the attorney assigned to this matter, at (202) 694-1525.

Sincerely,

Lynn Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Josh Hawley MUR: 7267
Hawley for Missouri and Doug Russell in his
official capacity as treasurer
Josh Hawley for Senate and Salvatore Purpura
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission"). The matter concerns whether Josh Hawley, the Attorney General of Missouri and a 2018 candidate for U.S. Senate, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by failing to timely file a Statement of Candidacy, and relatedly, whether his principal campaign committee, Josh Hawley for Senate and Salvatore Purpura in his official capacity as treasurer (the "Federal Committee"),¹ timely filed a Statement of Organization and disclosure reports with the Commission. The Complaint and its Supplement (collectively, the "Complaint") also argue that Hawley unlawfully used money from his state committee, Hawley for Missouri and Doug Russell in his official capacity as treasurer (the "State Committee"), to test the waters for his Senate run and finance federal campaign activity.

Hawley denies using nonfederal funds for his Senate campaign and asserts that he and the Federal Committee timely registered with the Commission and filed disclosure reports. He argues that he was merely testing the waters during the time the Complaint alleges he was a candidate. Because the available evidence supports Hawley's position, the Commission finds no

¹ Due to administrative oversight, the Federal Committee was not initially notified of the Complaint and Supplemental Complaint. See Letter from Jeff S. Jordan, Assistant Gen. Counsel, FEC, to Salvatore Purpura, Treasurer, Fed. Comm. (Dec. 22, 2017).

1 reason to believe that any of the Respondents violated 52 U.S.C. § 30125(e)(1), that Hawley
2 violated 52 U.S.C. § 30102(e)(1), or that the Federal Committee violated 52 U.S.C. §§ 30103(a)
3 and 30104(a).

4 II. FACTUAL BACKGROUND

5 On August 3, 2017, Hawley filed a Statement of Candidacy with the Secretary of the
6 Senate, and the Federal Committee filed its Statement of Organization.² The Complaint alleges,
7 however, that Hawley actually became a candidate much earlier.³

8 The Complaint argues that Hawley became a candidate for Senate soon after he was
9 elected Attorney General of Missouri in November 2016.⁴ From January to July 2017, Hawley
10 made approximately \$170,000 in disbursements from the surplus funds in his State Committee,
11 which had supported his election as Attorney General; the disbursements were for “media
12 production,” “advertising,” “media consulting,” “media buys,” “strategic planning,” and “direct
13 mailing.”⁵ These disbursements paid for, among other things, a minute-long digital
14 advertisement announcing that Hawley was using his authority as Attorney General to create a

² Joshua David Hawley, Statement of Candidacy (Aug. 3, 2017); Josh Hawley Senate Exploratory Committee, Statement of Organization (Aug. 3, 2017). The Federal Committee originally registered as the Josh Hawley Senate Exploratory Committee then later changed its name. *See* Josh Hawley for Senate, Amended Statement of Organization (Oct. 18, 2017).

³ *See* Compl. at 5-7, 8-9 (Aug. 4, 2017).

⁴ *General Election, November 08, 2016, Official Results*, MO. SEC’Y OF STATE, <http://enrarchives.sos.mo.gov/enrnet/default.aspx?eid=750003949> (Dec. 12, 2016).

⁵ *See* Mo. Ethics Comm’n (“MEC”), Hawley for Missouri, 2017 April Quarterly Report at 8-11 (Apr. 17, 2017); MEC, Hawley for Missouri, 2017 July Quarterly Report at 7-10 (July 17, 2017); *see also* Resp. at 2 (Sept. 17, 2017). Though the Federal Committee’s name does not appear on the initial or supplemental Joint Responses by Hawley and the State Committee, it stated in an email that it was adopting the Joint Responses as its own. E-mail from Troy McCurry, Attorney, The Gober Group, to Kathryn Ross, CELA, FEC (Jan. 3, 2017, 1:16 PM).

1 human trafficking task force and would employ Missouri's consumer protection laws to
2 prosecute human traffickers.⁶

3 According to the Complaint, the disbursements for the human trafficking advertisement
4 were for the purpose of promoting Hawley's Senate candidacy.⁷ The Complaint observes that
5 the advertisement aired long before the next Attorney General election in 2020 and never
6 mentioned the 2020 election, yet had the look of a campaign advertisement.⁸ It argues that
7 Hawley aired the advertisement to project himself "as a person qualified to be taken seriously as
8 a Senate contender" and shore up a base of support for his Senate run.⁹

9 The Complaint also points to media coverage and public comments in July 2017 for
10 additional evidence that Hawley had decided to run for Senate prior to filing a Statement of
11 Candidacy.¹⁰ It cites articles stating that Republican leaders were urging Hawley to run, that
12 Hawley had been the frontrunner since the spring, that Hawley's spokesperson admitted he was
13 considering a run, and that other associates stated he had committed to running.¹¹ The
14 Complaint notes that, on July 18, 2017, former Missouri State Senator Jane Cunningham

⁶ See Compl. at 3; *Josh Hawley: Combating Human Trafficking*, YOUTUBE, <https://www.youtube.com/watch?v=X7zY4sVhpgp> (Apr. 6, 2017) ("YouTube Video").

⁷ Compl. at 5, 8.

⁸ *Id.* at 2-3, 5-6.

⁹ *Id.* at 5, 8 (internal quotation marks omitted).

¹⁰ The Complaint was sworn and notarized on August 2, 2017, the day before Hawley filed his Statement of Candidacy; the Commission received the Complaint the day after Hawley had filed.

¹¹ Compl. at 2-4 (citing Deirdre Shesgreen, *Josh Hawley Mum on Senate Bid, But Others Buzzing*, SPRINGFIELD NEWS-LEADER (July 21, 2017), <http://www.news-leader.com/story/news/politics/2017/07/21/josh-hawley-mum-senate-bid-but-others-buzzing/500185001/>; Kevin McDermott, *Four Ex-U.S. Senators Urge Hawley to Run for Senate Next Year*, ST. LOUIS POST-DISPATCH (July 20, 2017), http://www.stltoday.com/news/local/govt-and-politics/four-ex-u-s-senators-urge-hawley-to-run-for/article_0eb7b1be-a56f-5216-84eb-32d7d66f5bd5.html; Kevin Robillard, *Sources: Hawley to Challenge McCaskill*, POLITICO (July 19, 2017), <https://www.politico.com/tipsheets/morning-score/2017/07/19/sources-hawley-to-challenge-mccaskill-221405>; David M. Drucker, *Republicans Turn to Josh Hawley to Challenge Sen. Claire McCaskill*, WASH. EXAMINER (Jan. 18, 2018), <http://www.washingtonexaminer.com/republicans-turn-to-josh-hawley-to-challenge-sen-claire-mccaskill/article/2627691>).

1 tweeted, “Based on good authority, I have every confidence that Josh Hawley will run for the
2 U.S. Senate.”¹² Moreover, the Complaint notes that on July 26, 2017, the president and founder
3 of the Susan B. Anthony List tweeted that she was “[m]eeting with MO US Senate Candidate
4 AG Josh Hawley.”¹³

5 On July 25 and 26, 2017, Hawley traveled to Washington, D.C., to attend meetings with
6 Republican Party leaders.¹⁴ The Complaint alleges that Hawley’s trip to Washington, D.C., was
7 related to his Senate campaign.¹⁵

8 Moreover, the Complaint alleges that Hawley financed his testing-the-waters activities
9 for his Senate campaign, including the costs of the human trafficking advertisement and the trip
10 to Washington, D.C., with State Committee funds.¹⁶ It also asserts that additional State
11 Committee disbursements for mailers, communications, and consulting services were for the
12 benefit of Hawley’s Senate campaign, based on the disbursements’ timing and because the
13 Federal Committee later reported payments to the same vendors.¹⁷

14 Hawley, the State Committee, and the Federal Committee’s initial and supplemental Joint
15 Responses (collectively, the “Response”) deny the allegations. The Respondents assert that

¹² *Id.* at 3-4 (citing Shesgreen, *supra* note 11); see Jane Cunningham (@JCunninghamMO), TWITTER (July 18, 2017, 8:10 PM), <https://twitter.com/JCunninghamMO/status/887464742100627457>.

¹³ Compl. at 4 (citing Kevin McDermott, *In Latest Hint of Senate Run, Anti-Abortion Leader Calls Hawley ‘Candidate,’ then Deletes Tweet*, ST. LOUIS POST-DISPATCH (July 26, 2017), http://www.stltoday.com/news/local/govt-and-politics/in-latest-hint-of-senate-run-anti-abortion-leader-calls/article_e912647b-e084-56cc-a491-d93152c6710b.html).

¹⁴ Resp. at 2.

¹⁵ See Compl. at 3 (citing Bryan Lowry, *Missouri Attorney General Hawley Visits D.C. as he Weighs Senate Run*, KANSAS CITY STAR (July 26, 2017), <http://www.kansascity.com/news/local/news-columns-blogs/the-buzz/article163811678.html>).

¹⁶ *Id.* at 5-7; Supp. Compl. at 3-4 (Nov. 15, 2017).

¹⁷ See Compl. at 2-3, 6-7; Supp. Compl. at 2-4; and compare Josh Hawley for Senate, 2017 October Quarterly Report at 129-37, with MEC, Hawley for Missouri, 2017 October Quarterly Report at 6 (Oct. 16, 2017). The October Quarterly Report was the Federal Committee’s first regularly scheduled report after its organization.

1 Hawley spent money from his State Committee not to explore or promote a federal candidacy,
2 but to “engage in media outreach, coalition building, and expanding his base of support to bring
3 attention to new human trafficking initiatives and other important issues.”¹⁸ They state that
4 Hawley wanted to “build clout” so that he could successfully enact his agenda as Attorney
5 General and win re-election to that state office in 2020.¹⁹ The Respondents deny that any of the
6 State Committee’s disbursements were for the benefit of Hawley’s Senate campaign or testing-
7 the-waters activities;²⁰ Hawley swears the same in an affidavit.²¹

8 The Respondents also assert that Hawley was not considering a Senate run until July
9 2017, after several potential Republican candidates had announced they would not be pursuing
10 the office.²² At that time, according to the Response, Hawley began testing the waters for a
11 potential run, including taking the trip to Washington, D.C. — which Respondents assert the
12 Federal Committee paid for — to assess the viability of a Senate campaign.²³ The Respondents
13 state that any media accounts or public commentary on Hawley’s decision to run prior to July 19,
14 2017, were purely speculative and made without Hawley’s knowledge.²⁴ Hawley also states in
15 his affidavit that he made the decision to run “at some point on or after July 19, 2017,”²⁵ giving
16 him until at least August 3, 2017 to file his Statement of Candidacy. Therefore, the Respondents

¹⁸ Resp. at 2.

¹⁹ *Id.*

²⁰ *Id.* at 1, 4; Supp. Resp. at 1-4 (Dec. 15, 2017).

²¹ Joshua Hawley Aff. ¶ 3 (Sept. 15, 2017) (stating that “no funds . . . spent from accounts associated with Hawley for Missouri . . . were for the purpose of either (i) exploring the viability of a federal candidacy or (ii) promoting a federal candidacy”); *see also* Supp. Resp. at 3-4 (detailing the stated purposes of disbursements to vendors reported to the MEC by the State Committee).

²² Resp. at 2, 4.

²³ *Id.* at 2, 6.

²⁴ *Id.* at 2.

²⁵ Hawley Aff. ¶ 2.

1 assert, Hawley's Statement of Candidacy and the Federal Committee' registration and reports
2 were timely filed.²⁶

3 **III. LEGAL ANALYSIS**

4 An individual becomes a candidate when: (a) such individual receives contributions or
5 makes expenditures in excess of \$5,000, or (b) such individual gives his or her consent to another
6 person to receive contributions or make expenditures on behalf of such individual and if such
7 person has received such contributions or has made such expenditures in excess of \$5,000.²⁷
8 Once the \$5,000 threshold has been met, the candidate has fifteen days to designate a principal
9 campaign committee by filing a Statement of Candidacy.²⁸ The principal campaign committee
10 must file a Statement of Organization within ten days of its designation,²⁹ and must file
11 disclosure reports in accordance with 52 U.S.C. § 30104(a) and (b).³⁰

12 The Commission has established "testing the waters" exceptions from the definitions of
13 "contribution" and "expenditure" for funds received and payments made solely to determine
14 whether an individual should become a candidate, thereby permitting an individual to test the
15 feasibility of a campaign for federal office without becoming a candidate under the Act.³¹ These
16 testing-the-waters regulations seek to draw a distinction between activities directed to evaluating
17 the feasibility of one's candidacy and conduct signifying that a decision to become a candidate

²⁶ Resp. at 3-5.

²⁷ 52 U.S.C. § 30101(2).

²⁸ *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

²⁹ See 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

³⁰ See, e.g., Factual & Legal Analysis ("F&LA") at 6, MUR 6735 (Joseph A. Sestak); F&LA at 5, MUR 6449 (Jon Bruning); F&LA at 2, MUR 5363 (Alfred C. Sharpton).

³¹ See 11 C.F.R. §§ 100.72, 100.131; F&LA at 7, MUR 6775 (Hillary Clinton); F&LA at 8, MUR 6776 (Niger Innis); F&LA at 6, MUR 6735 (Joseph A. Sestak).

1 has been made.³² Testing-the-waters activities include, but are not limited to, payments for
2 polling, telephone calls, and travel, and only funds permissible under the Act may be used for
3 such activities.³³

4 An individual who is testing the waters need not register or file disclosure reports with
5 the Commission until the individual decides to run for federal office.³⁴ However, an individual
6 who tests the waters must keep financial records, and if he or she becomes a candidate, all funds
7 received, or payments made in connection with testing the waters, must be reported as
8 contributions and expenditures in the first report filed by the candidate's principal campaign
9 committee.³⁵

10 The testing-the-waters exceptions are not available to individuals who have decided to
11 become candidates.³⁶ Commission regulations set forth a non-exhaustive list of activities that
12 indicate when an individual is no longer testing the waters and has decided to become a
13 candidate. Such indicia include: (1) using general public political advertising to publicize his or
14 her intention to campaign for federal office; (2) raising funds in excess of what could reasonably
15 be expected to be used for exploratory activities or undertaking activity designed to amass
16 campaign funds that would be spent after he or she becomes a candidate; (3) making or
17 authorizing written or oral statements that refer to him or her as a candidate for a particular

³² See Advisory Op. 1981-32 (Askew) ("AO 1981-32").

³³ 11 C.F.R. §§ 100.72(a), 100.131(a).

³⁴ AO 1981-32; *see also* Advisory Op. 2015-09 (Senate Majority PAC) at 5 ("AO 2015-09").

³⁵ 11 C.F.R. § 101.3.

³⁶ See AO 2015-09 at 5; *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (stating that the exemption is "explicitly limited 'solely' to activities designed to evaluate a potential candidacy").

1 office; (4) conducting activities in close proximity to the election or over a protracted period of
2 time;³⁷ and (5) taking action to qualify for the ballot under state law.³⁸

3 The Act also, with some exceptions, prohibits federal candidates, their agents, and
4 entities established, financed, maintained, or controlled (“EFMC’d”) by federal candidates from
5 soliciting, receiving, directing, transferring, or spending funds in connection with any election
6 unless the funds are subject to the limitations, prohibitions, and reporting requirements of the
7 Act.³⁹

8 **A. There is No Reason to Believe that Hawley and the Federal Committee Failed**
9 **to Timely Register and File Reports with the Commission**

10 Hawley filed his Statement of Candidacy and the Federal Committee filed its Statement
11 of Organization on August 3, 2017.⁴⁰ Those filings are timely if Hawley became a candidate on
12 or after July 19, 2017.⁴¹

13 The Complaint identifies three sets of disbursements that it alleges were for the purpose
14 of Hawley’s Senate exploratory or campaign efforts: (1) the advertisement on human trafficking;
15 (2) payments to vendors eventually retained by the Federal Committee; and (3) Hawley’s July 25
16 and 26, 2017, trip to Washington, D.C. The Complaint relies on these disbursements, along with
17 statements from individuals other than Hawley, to suggest that Hawley was testing the waters for

³⁷ The Commission has advised that there is no specific time limit for such activities, and the length of time spent testing the waters is but one factor in determining whether an individual becomes a candidate. AO 2015-09 at 6.

³⁸ 11 C.F.R. §§ 100.72(b), 100.131(b).

³⁹ 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.62. The Act provides an exception to the soft money prohibition in certain circumstances where a federal candidate “is or was also a candidate for State or local office.” 52 U.S.C. § 30125(e)(2). Such a candidate may solicit, receive, or spend nonfederal funds as long as that solicitation, receipt, or spending: (1) is “solely in connection with such election for State or local office;” (2) “refers only” to him or her, to other candidates for that same state or local office, or both; and (3) is permitted under state law. *See id.*; 11 C.F.R. § 300.63.

⁴⁰ FEC, Hawley, Statement of Candidacy; FEC, Josh Hawley for Senate, Statement of Organization.

⁴¹ *See* 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

1 a federal candidacy as early as January 2017 and that he decided to become a candidate prior to
2 July 19, 2017. The available information, however, does not indicate that Hawley triggered
3 candidacy prior to July 19, 2017.

4 First, the record indicates that the human trafficking advertisement appears related to
5 Hawley's official duties as Attorney General, not his Senate candidacy.⁴² The State Committee
6 disclosed the first disbursements for the advertisement in early January 2017, which was well
7 before July 3, 2017, when Hawley attests he began considering a Senate run once other
8 presumptive candidates had indicated they would not enter the race.⁴³ Even the news articles
9 reporting that Hawley was testing the waters that were cited in the Complaint were not published
10 until July 2017, months after the advertisement aired and after the date Hawley acknowledges he
11 was considering running for Senate.⁴⁴ Thus, it does not appear that the trafficking advertisement
12 was a use of general public political advertising to publicize Hawley's intention to campaign for
13 federal office.

14 Second, the disbursements made by the State Committee to vendors eventually retained
15 by the Federal Committee do not appear to be related to Hawley's federal candidacy and

⁴² The advertisement consists of Hawley speaking directly to camera, identifying himself as Attorney General, and discussing human trafficking and his office's anti-trafficking initiative; the advertisement contains a disclaimer indicating payment by the State Committee but does not reference any candidate or any election to any office. *See* YouTube Video, *supra* note 6; *see also* MO. REV. STAT. § 103.034(2) (stating that campaign contributions may be used for "[a]ny ordinary and necessary expenses incurred in connection with the duties of a holder of elective office"); *cf.* Advisory Op. 2009-26 (Coulson) at 9 (recognizing that a state officeholder may continue using state funds for routine officeholder communications while running for federal office) ("AO 2009-26").

⁴³ *See* Compl. at 2 n.3 (McDermott, *supra* note 11); Hawley Aff. ¶ 2; Resp. at 2; *see also* MEC, Hawley for Missouri, 2017 April Quarterly Report at 8-11.

⁴⁴ *See supra* notes 11-13. These articles and tweets also have limited evidentiary value because they appear to have been based on unauthorized third-party statements. *Cf.* 11 C.F.R. §§ 100.72(b), 100.31(b) (considering only comments made by or authorized by the relevant individual as indicia that the individual has decided to run for office). Moreover, to the extent that any statements and tweets highlighted in the Complaint were authorized by Hawley, they were almost all made on or after July 19, 2017, with the exception of a few made earlier that week.

1 therefore do not establish that Hawley was testing the waters or became a candidate before July
2 2017. With respect to the Complaint's allegation that all of the State Committee's disbursements
3 to this overlapping set of vendors were for the purpose of promoting Hawley's Senate campaign,
4 the Respondents rebut the allegation by explaining how each payment related to Hawley's
5 activities as Attorney General.⁴⁵ Moreover, Hawley stated in his sworn affidavit that none of the
6 State Committee's disbursements were related to his federal campaign and that he made the
7 decision to run "at some point on or after July 19, 2017."⁴⁶

8 Finally, the only other expenditures identified by the Complaint were the expenses for
9 Hawley's trip to Washington, D.C., on July 25 and 26, 2017. The Respondents admit that the
10 trip was for the purpose of exploring Hawley's federal candidacy, and explain that the Federal
11 Committee paid for the travel expenses and would disclose the expenses in its next report.⁴⁷
12 Although we do not know how much the Federal Committee spent on this trip, even if it was
13 costly enough to trigger Hawley's candidacy, Hawley filed his Statement of Candidacy and the
14 Federal Committee's Statement of Organization approximately one week after the trip, which is
15 within the timeframe allotted by the Act.⁴⁸ The Committee then timely filed its next-scheduled
16 report with the Commission.⁴⁹

17 Because the evidence presented in the Complaint fails to provide adequate information to
18 support the conclusion that Hawley may have become a candidate prior to July 19, 2017, the

⁴⁵ See Supp. Resp. at 3-4; *see also* Compl.; Supp. Compl.

⁴⁶ See Hawley Aff. ¶ 3.

⁴⁷ See Resp. at 2, 6. The Response was filed on September 17, 2017, before the Federal Committee's October Quarterly Report was due.

⁴⁸ See 52 U.S.C. §§ 30102(e)(1), 30103(a).

⁴⁹ See FEC, Fed. Comm., 2017 October Quarterly Report. The Federal Committee's October Quarterly Report includes several disbursements for travel, but does not specify the destination of the travel or designate whether the disbursements related to Hawley's testing-the-waters activities. *See id.* at 129-37.

Commission finds no reason to believe Hawley violated 52 U.S.C. § 30102(e)(1) and the Federal Committee violated 52 U.S.C. §§ 30103(a) and 30104(a).

B. There is No Reason to Believe that the Respondents Violated the Act's Soft-Money Prohibitions

The Complaint also fails to establish that the State Committee disbursed or transferred funds for Hawley to test the waters or campaign for Senate, in violation of the Act's soft-money prohibitions. As noted above, the record shows that the State Committee's disbursements to vendors were for services rendered to the State Committee, and the human trafficking advertisement was related to Hawley's duties as a state officeholder.⁵⁰ The only identifiable expenditure for federal campaign or testing-the-waters activities made by Hawley prior to filing his Statement of Candidacy was his travel to Washington, D.C. However, because the Respondents state that the Federal Committee financed that trip, it appears that it was paid for with hard money.⁵¹ As there is therefore no information indicating that the State Committee paid for any of Hawley's Senate campaign or testing-the-waters activities, the Commission finds no reason to believe that the Respondents violated 52 U.S.C. § 30125(e)(1) by spending or transferring soft money in connection with federal testing-the-waters or campaign activities.

⁵⁰ *Cf.* AO 2009-26 at 9.

⁵¹ *See* Resp. at 6; Supp. Resp. at 4.